to the partners in the business and he knew that the defendant was one of those partners. I need only add that in this case it ill became the plaintiff's manager, who put forward on oath a version of the facts which I am entirely unable to accept, to raise the question of the impropriety of the defendant's actions.

There remains the one important question for decision in this case. Did the purchase by the defendant of the shares of the other partners in the business operate to put an end to the tenancy? On this point counsel for the plaintiff relied upon the decision in *Langton v. Henson*[1] in which the decision in *Varley v. Coppard*[2] was considered and followed; whilst counsel for the defendant relied upon *Corporation of Bristol v. Westcott*[3].

The judgment of Buckley, J. in *Langton v. Henson*[1] deals very clearly with the distinction between the two other cases. The following is the relevant passage from that judgment :—

> The Master of the Rolls (Sir George Jessel) held, as a matter of construction, that 'part with possession to any person or persons' meant part with possession to any other person or persons than the lessee or assignees. What had been done by way of parting with possession was that the one had, as we say, gone out of possession, and the only thing that the Court decided was that by so doing he had not parted with anything to the other because the other had already got the whole of it. Each was in possession, and you could not part with possession to a person who already had possession. That is a matter which has nothing to do with the question of assignment, because when one of two joint tenants assigns to another, or, as Sir George Jessel preferred to call it, releases to the other, he does most effectually deal with the estate; he destroys the privity of estate between himself and his lessor; the estate is affected; something has been parted with.

There is no evidence before me of any actual assignment or attempted assignment of the tenancy itself. The only evidence is that the other partners assigned their interests in the business to the defendant. All that happened in regard to the tenancy, so it seems to me, is that some of those in possession went out and the defendant, who had all along been in possession, remained in possession. This is very similar to what happened in the *Corporation of Bristol*[3] case.

Any possible doubts there might have been as to which of the above-quoted authorities should be followed is in my view set at rest by the actual wording of the relevant clause of the agreement, which is set out earlier in this judgment. The expression "a third party" can, in the agreement in question, only mean someone other than the parties to the agreement; and in this instance, since the agreement is made in the firm name, that can only mean somebody who was not a partner in the Hotel at the time the tenancy agreement was made. There has, therefore, in my opinion been no sub-letting or assignment to a "third party" and therefore no breach of the tenancy agreement and the defendant is entitled to continue in possession of the premises.

For these reasons the plaintiff's claim fails and there must be judgment for the defendant with costs.

Order Accordingly.

PUBLIC PROSECUTOR v. THE STRAITS TIMES PRESS LTD.

[Orig. Crim. Juris. (Spenser-Wilkinson, J.) August 24, 1948]

[K.L. — Crim. Misc. Application No. 7 of 1948]

Contempt of Court — Publication of letter when appeal was pending — Misrepresentation of facts or comments based upon a wrong view of the facts — When criminal case remains sub judice — Whether the publication did prejudice the fair disposal of the proceedings or tended to do so — Proper course of tendering immediate and ample apology — No penalty imposed.

In this case, upon the application of the Public Prosecutor, the Respondents, who are the proprietors of the Straits Times Press Ltd., were ordered to appear before the Court and answer for their alleged contempt in publishing a certain letter in the issue of the Straits Times dated the 5th August 1948. The Notice of Motion having set out the terms of the letter complained of went on to allege **inter alia** that the criminal case referred to in the letter was **sub judice** when the letter was published in that an appeal was pending; that the terms of the letter did not constitute a fair or accurate account of the trial nor fair comment thereon; and that its publication tended to prejudice the fair disposal of the proceedings and tended to bring into contempt the administration of justice by that Court.

Held, (1) that in applying the law of contempt the Court will not lose sight of local conditions; (2) that even severe criticism of what has actually occurred in a trial will be tolerated, but inaccurate and misleading facts and comments will not; (3) that a criminal case remains **sub judice** until the expiration of the time allowed for appealing or in the event of an appeal until the conclusion of the appeal; (4) that the letter complained of in this case constituted a contempt of Court in two ways, firstly as tending to prejudice the fair disposal of the appeal and also as reflecting upon the administration of justice by the Court.

Obiter Dicta: In this country the Court of Appeal has power in all criminal cases to order a re-trial and frequently does so, with the result that any comments in the press upon a criminal case pending appeal may affect the minds not only of the judges of the Court of Appeal but also of those laymen who may be called as Assessors at the re-trial.

Cases referred to :—

(1) *McLeod v. St. Aubyn* (1899) A.C. 549.

(2) *Ambard v. Attorney-General for Trinidad and Tobago* (1936) A.C. 322 at p. 335.
(3) *Hunt v. Clark* 61 L.T. 343.
(4) *Rex v. Davies* (1945) 1 K.B. 435.
(5) *Roach v. Garvan* 26 E.R. 683.
(6) *Dunn v. Bevan* (1922) 1 Ch. at p. 285.

CRIMINAL APPLICATION.

E. N. Griffith-Jones, D.P.P., for the Public Prosecutor.

H. D. Mundell (*Charlesworth* with him) for the Respondents.

Spenser-Wilkinson, J. : — Upon the application of the Public Prosecutor, the Respondents, who are the proprietors of the Straits Times newspaper, were ordered to appear before this Court and answer in respect of their alleged contempt of Court in publishing a certain letter in the issue of that newspaper of the 5th August, 1948. The notice of motion having set out the terms of the letter complained of (which admittedly had reference to the trial before the High Court of one Tan Seng Ann) went on to allege *inter alia* that the criminal case referred to in the letter was *sub judice* when the letter was published in that an appeal was pending; that the terms of the letter did not constitute a fair or accurate account of the trial nor fair comment thereon; and that its publication tended to prejudice the fair disposal of the proceedings and tended to bring into contempt the administration of justice by this Court.

Upon the order being made the Respondents filed four affidavits made by their Managing Director, Editor, Sub-Editor and Printer and Publisher respectively in which each tendered his apologies to the Court in case it should be considered that any contempt of this Court had been committed. From the affidavit of the editor it also appears that in the issue of the Respondents' other newspaper, the Sunday Times, for the 1st August, 1948, a report of the trial of Tan Seng Ann appeared which, it is now admitted, was misleading and inaccurate in that it gave the impression, contrary to the facts, that the first step in the proceedings in that case was a voluntary confession by Tan Seng Ann that he was in possession of a fire-arm and that his arrest was made solely as the result of such voluntary confession.

The Respondents have not been called upon to answer in respect of their report in that Sunday Times, but it is relevant to these proceedings because the facts stated and comments made in the letter complained of are based upon this misleading report, which was admittedly the only source of information at that time available to the writer of the letter. Moreover, it was the only source of information regarding the trial available to a large number of those who subsequently read the letter. In considering, therefore, the general effect of the letter it will be necessary to bear in mind the existence and effect of the earlier report.

For the Respondents it was contended that even if this letter constituted, technically, a contempt of Court, yet it was not such a contempt as would justify the Court in interfering by way of the summary procedure which has been adopted in this case; for according to a series of decisions in England over the last seventy years it is only in the graver instances of contempt that the Court will interfere in this manner.

I do not propose to deal in detail with all these authorities. I have studied them with great care, but I would hesitate to follow too closely the decisions of English Courts on this subject without first considering whether the relevant conditions in England and this country are at all similar. Quite apart from the present emergency in this country, I do not think it could be suggested that the development of the Press, the general standard of education or the composition of the general public in the two countries are at all comparable and it may, therefore, be necessary to take a stricter view here of matters which pertain to the dignity of the Courts and the impartial administration of justice than would be taken at the present time in England. There is, moreover, authority for the proposition that in applying the law of contempt the Court will not lose sight of local conditions (*McLeod v. St. Aubyn*[1] cited with approval in *Ambard v. Attorney-General for Trinidad and Tobago*[2]). I would observe, however, that having considered the various publications complained of in the English cases cited before me there is only one in which it seems to me that the Courts here might have taken a stricter view — and in that case the English Court of Appeal, although they did not reverse the decision of the Court below, made use of language which suggested strongly that they might have decided the case differently had they heard it in first instance. (*Hunt v. Clark*[3]).

One authority was cited to me on behalf of the Respondents which I should feel bound to follow if the matter now before me were to come within the scope of the decision. This is the case of *Ambard v. The Attorney-General for Trinidad and Tobago* (above referred to), the head-note of which, so far as it is relevant, reads as follows :—

> Whether the authority and position of an individual judge, or the due administration of justice, is concerned, no wrong is committed by any member of the public who exercises freely the ordinary right of criticizing temperately and fairly, in good faith, in private or in public, any episode in the administration of justice. Provided that members of the public abstain from imputing improper motives to those taking part in the administration of justice, and are genuinely exercising a right of criticism and not acting in malice, or attempting to impair the administration of justice, they are immune from proceedings for contempt of Court.

The publication complained of in that case was a temperately-worded criticism of certain sentences passed by the local Courts; the facts were in no way misrepresented and the publication contained an express disclaimer of any suggestion that one of the particular judges was habitually severe or the other habitually lenient. There was no question in that case of substantially inaccurate facts or of comment rendered unfair on account of such inaccuracy and I do not read the decision as laying down that misrepresentation of facts or comments based upon a wrong view of the facts must always be allowed to pass unchecked. Indeed, I think it is a proper inference from that decision that whilst even severe criticism of what has actually occurred will be tolerated, inaccurate and misleading facts and comments will not.

There is a further point of distinction in regard to *Ambard's* case[2] to which I will now refer in connection with another decision which must be noted. *Rex v. Davies*[4] is an authority for the proposition that a criminal case remains *sub judice* until the expiration of the time allowed for appealing or in the event of an appeal until the conclusion of the appeal. That decision is based upon the power of the Court of Criminal Appeal in certain cases to award *venire de novo*, although it is a power not very frequently exercised. In this country the Court of Appeal has power in all criminal cases to order a re-trial and frequently does so, with the result that any comments in the press upon a criminal case pending appeal may affect the minds not only of the judges of the Court of Appeal but also of those laymen who may be called as Assessors at the re-trial. The possibility that the minds of lay assessors may thus be influenced by irresponsible comment is in this country a genuine danger which ought not, in my opinion, to be overlooked; and this point did not arise in *Ambard's* case because the publication in that case was concerned only with the question of sentence.

The case of *Rex v. Davies* just referred to is of importance in another respect because the Deputy Public Prosecutor referred me to the observations of Humphreys, J. in that case to the effect that although improper publications are unlikely to cause any judge to give a decision which he would otherwise not have given yet they may cause him embarrassment and no one has the right to publish matter which will have that effect. The Deputy Public Prosecutor suggested that the letter now in question, being published, as it was, immediately prior to the hearing of the appeal, amounted to an invitation (though no doubt an unintentional invitation) to the Court of Appeal to quash the conviction. Whilst I find myself, with respect, in full agreement with the observations of Humphreys, J. on this subject I think perhaps the learned Deputy Public Prosecutor put this point rather too high; and whilst I think that the learned judges who heard the appeal in Tan Seng Ann's case may have been to some extent embarrassed by the publication of this letter I feel more concerned with the possible and indeed likely effect upon the minds of assessors at a re-trial. The fact that in this instance the appeal was dismissed does not affect the question before me which is not whether the publication *did* prejudice the fair disposal of the proceedings, but whether it *tended* to do so.

Considering the letter as a whole I have come to the conclusion that it tended to prejudice the fair disposal of the criminal proceedings before this Court and was therefore a contempt of Court. But I must go further and decide whether this was such a contempt as will justify me in making any order. Counsel for the Respondents dealt with the letter almost entirely upon the basis of whether or not it was calculated to prejudice the proceedings; but the Deputy Public Prosecutor argued that the comment in the letter constituted a grave reflection upon the conduct of the prosecution at the trial; that the conduct of the prosecution is a necessary and integral part of the administration of justice and that it is vital in the interests of the dignity and repute of the Courts that the part it plays in criminal proceedings should not be misrepresented. He cited in support of this contention the famous dictum of Lord Hardwicke in *Roach v. Garvan*[5] that :—

> Nothing is more incumbent upon courts of justice than to preserve their proceedings from being misrepresented; nor is there anything of more pernicious consequence, than to prejudice the minds of the public against persons concerned as parties in causes before the cause is finally heard.

It was held in that case that notwithstanding that a publication is a libel upon one of the parties the court will not interfere unless there is also an element of contempt and it was further held that the publication

there in question was a contempt and the printers concerned were committed. (I mention this because it appears to be suggested in *Dunn v. Bevan*[6] that this was a case in which the proceedings for contempt failed).

Clearly not every libel against a prosecuting officer in a criminal case is a contempt of Court, but the remarks in the letter here complained of seem to me not only to be an attack upon the prosecution but also to carry the necessary implication that the trial Court permitted the Deputy Public Prosecutor before it to adopt a course in respect of the accused which was unfair and resulted in a miscarriage of justice.

It seems to me therefore that the letter complained of constituted a contempt of Court in two ways — as tending to prejudice the fair disposal of the appeal and of any subsequent proceedings which might be ordered; and also as reflecting upon the administration of justice by the Court. I hold, therefore, that this letter constituted such a contempt of Court as justifies this Court in interfering in these proceedings.

In deciding what order should be made I would consider the fact that the whole trouble originated with the Respondents' own publication of an inaccurate report of the trial. Unfortunately, reports of proceedings in this country are only too often inaccurate, though I lay no blame upon anyone for this because the facilities for accurate reporting are incomparably less adequate here than they are in England. But the Respondents should have been on their guard against this possibility — indeed the fact deposed to in his affidavit that the Editor instructed the Respondents' representative in Kuala Lumpur to make further enquiries about the case suggests to me that he suspected the accuracy of the report. Yet the letter complained of was published without awaiting the results of that enquiry, and with the knowledge that an appeal was pending.

These circumstances might have inclined me to impose a substantial punishment in this case but I also bear in mind that the Respondents took the very proper course of tendering an immediate and ample apology and that their affidavit give a very frank and full explanation of how the letter in question came to be published. I do not think, in the circumstances, that this is a case in which any penalty should be imposed. I therefore confine myself to ruling, having regard to the possibility of future cases, that the letter here in question constituted a punishable contempt of this Court.

In view of an intimation by counsel that certain submissions might be made upon the question of costs, I reserve this question for further argument.

Ruled that the letter constituted a punishable contempt.

MAN LEE LOONG KONGSI v. KWONG LOONG MINING KONGSI AND ANOTHER.

[App. Civil Juris. (Jobling, J., Callow, J. and Russell, J.) July 24, 1948]

[Perak — Civil Appeal No. 4 of 1948]

Civil Procedure Code S. 497 — Order to enter upon and prospect land to secure evidence for assessment of damages.

In 1937 the Appellants obtained judgment for damages for breach of contract against the defendants and an enquiry was ordered by the Registrar as to the amount of damages suffered. In 1940 the appellants obtained an order to enter upon prospect and prove the mining land in respect of which the damage had been suffered. The appellants also obtained a conditional attachment of the land. Inspection was made by a firm of mining engineers on behalf of the appellants and a report filed. Subsequently the respondents filed a reply and a report of other mining engineers engaged on their behalf traversing the report of the appellants' experts. In February 1948 the appellants again applied for an order to enter upon prospect and prove the land for the purpose of obtaining further evidence to support their claim for damages and to rebut the allegations of the respondents. The application was objected to by the respondents on the ground (1) that the Court had no power to make the order as the respondents were no longer in possession of the land, (2) that even if the Court has power the Appellants had already obtained one order and was not entitled to repeated orders, and (3) there had been unreasonable delay in the application for a further order.

Held, (1) that as there was an order of Court attaching the property and restraining the respondents from dealing with it the respondents could not be heard to say that they have transferred it and in any case there was no evidence to show that the property was not in the possession of the respondent; (2) that there could be no objection to repeated orders if justice demanded them and the matter was one within the discretion of the Court; (3) that there was in fact no unreasonable delay in the making of the application.

Case referred to:—

(1) *Garrard v. Edge* 37 W.R. 501.

CIVIL APPEAL.

J. L. Woods for the Appellants.

R. D. Hume and J. L Lewis for the 1st Respondents.

Jobling, J.: — The history of the appeal is as follows. The Plaintiffs/Appellants obtained judgment against the Defendants/Respondents in 1937 for damages in respect of breach of contract and an enquiry by the Registrar as to the amount of damages suffered was ordered.